



February 12, 2010

Letter of Appeal
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Received & Inspected

MAR -3 2010

FCC Mail Room

DOCKET FILE COPY ORIGINAL

RE: Administrator's Decision on Contributor Appeal
CC Docket No 96-45
Filer 499 ID: 824772

Greetings:

I am writing to appeal the Administrator's Decision on Contributor Appeal letter (attached). We requested that our true and accurate filing be accepted and entered into our account. We would accept funds be credited to our account for future use.

PacNet did not file the 2008, 2007, 2006 FCC Form 499A because we were undergoing both State and City audits of our revenue whereby we recognized that we had reported and were reporting inaccurate Interstate and Intrastate and International revenues. We did not file the returns in compliance with "Section G Compliance of the Instructions to the Telecommunication Report Worksheet, Form 499-A" where the rule states that "Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecutions under criminal provisions of Title 18 of the United States Code." The 2008, 2007 and 2006 499A reported revenue numbers were arbitrary numbers imposed by USAC based on estimates it (USAC) derived. While we understood that there would be consequences for not filing, we did not file due to this specific rule stated above.


In addition, we did not file revised Worksheet until our Revenue was cleared from State and City audits. We again understood that there would be consequences to not filing these revisions timely however "Section E Obligation to File Revisions of the Instructions to the Telecommunications Report Worksheet, Form 499-A" does not explain or outline that if failure to file within a certain date then all monies collected and paid on behalf of USAC would be forfeited. We contend that failure to outline and specify this considerable fact should NOT penalize our company and it's clients.

We request that the Administrator's Decision on Contributor Appeal be overturned due to

1. the omission and lack of clarity in the instructions on how the USAC can use arbitrary estimations if accurate numbers are under scrutiny by State and Local audits and
2. the lack of clarity that revisions to reporting would result in forfeiture if not corrected within a certain time period.

Your time and consideration is appreciated. Below is my contact info.

Thank you,


Jenny Lashinski
Vice President

No. of Copies rec'd 0
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Contact Info:

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Administrator's Decision on Contributor Appeal

By Certified Mail

December 15, 2009

Ms. Jenny Lashinski
PacNet LLC
15821 NE 8th St.
Suite W200
Bellevue, WA 98008

Re: PacNet LLC (Filer ID 824772)
Letters of Appeal dated November 2, 2009

Dear Ms. Lashinski:

The Universal Service Administrative Company (USAC) has completed its evaluation of the appeals you submitted on behalf of PacNet LLC, dated November 2, 2009.¹ The appeals concern rejection of PacNet's revised 2006, 2007 and 2008 Form 499-As. All three Form 499-As were downward revisions submitted outside the twelve-month downward revision period. PacNet requests that USAC waive the twelve-month revision deadline and accept the revised forms. As discussed in more detail below, USAC hereby denies PacNet's appeals.

Decision on Appeal: Denied

Federal Communications Commission (FCC or Commission) regulations require telecommunications carriers to file an annual FCC Form 499-A. In addition, carriers are also required to file quarterly Form 499-Qs, unless they meet the *de minimis* exemption.²

¹ PacNet submitted three letters of appeal dated November 2, 2009, one letter for each year from 2006 through 2008. Because each appeal requests the same relief, for administrative efficiency, USAC is responding with one decision letter.

² See 47 C.F.R. § 54.706(a) ("Entities that provide interstate telecommunications to the public or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms"); See also, 47 C.F.R. § 54.711(a) ("The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis."); 47 C.F.R. § 54.708 (Providing an exemption from the reporting requirements of Section 54.711(a) only if the "...contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing Telecommunications Relay Service, numbering administration, or shared costs of local number portability.") We note that regulations governing the Telecommunications Relay Service requires all interstate telecommunications service providers to file at least an annual Telecommunications Reporting Worksheet (FCC Form 499-A). 47

USAC relies on projected revenue for the upcoming quarter reported on the Form 499-Q to bill contributors and relies on the annual Form 499-A to reconcile billings for the previous year, as projected on the Form 499-Qs. *See generally*, 47 C.F.R. Part 54.

The FCC has stated that timely filing of the FCC Form 499 is an essential administrative requirement that serves the public interest, and which the FCC relies upon in order to determine the quarterly USF contribution factor.³ The FCC established a 45-day revision window to give contributors an opportunity to revise their quarterly forms while adequately maintaining appropriate USF funding in a given quarter. The revision period ends 45 days after the due date of each Form 499-Q.⁴ The FCC also established a twelve-month revision window to permit contributors to revise Form 499-A filings.⁵ The Form 499-A revisions are due on March 31 following the April 1 original deadline.⁶ However, revisions are always accepted if the revision results in an increased contribution obligation.⁷ In all cases, it is the contributor's obligation to ensure filings are made in a timely manner.

PacNet failed to submit by the April 1 deadline its Form 499-As for filing years 2006, 2007 and 2008 reporting revenue from 2005 to 2007. If a filer fails to submit its Form 499-A, USAC must bill the contributor based on whatever relevant data is available to USAC.⁸ It is USAC procedure to prepare the missing form and estimate the filer's revenue for the reporting year.⁹ USAC's estimate is based on previous Form 499-A

C.F.R. § 64.604(c)(5)(iii)(A-B). Regulations governing local number portability and number administration require all telecommunications carriers providing service in the United States to complete a FCC Form 499-A. 47 C.F.R. §§ 52.32(b) and 52.17(b).

³ *In the Matter of Request for Review by Atlantic Digital, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, Order, DA 05-520, 20 FCC Rcd. 4224, 4225-26, ¶¶ 3, 5 (2005).

⁴ *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, ¶36 (2002) (*Interim Contribution Methodology Order*).

⁵ *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, Order, DA 04-3669, 20 FCC Rcd 1012, ¶ 10 (2004) (*Revision Deadline Order*) ("any revised 499-A that would result in decreased contributions must be submitted by March 31 of the year after the original filing due date.").

⁶ *Id.*

⁷ *Id.* at ¶ 1.

⁸ 47 C.F.R. § 54.709(d).

⁹ See USAC website at <http://www.usac.org/fund-administration/contributors/revenue-reporting/estimated-revenue.aspx>. *See also*, 47 C.F.R. § 54.709(d).

submissions. If a filer then submits its Form 499-A, USAC considers the filer submitted form a revision to the Form 499-A completed by USAC. If the filer's Form 499-A is submitted before March 31, the end of the twelve-month revision period, USAC will accept the revised filing. If the filing is submitted after the twelve-month revision deadline, USAC will only accept the filing if it is an upward revision to the initial form containing the USAC estimated revenue.

USAC records indicate that PacNet timely submitted the 2006 Form 499-A on April 3, 2006. However, PacNet first submitted the 2007 and 2008 Form 499-As on September 8, 2009. Consistent with the aforementioned procedure, because PacNet did not submit its 2007 and 2008 Form 499-As, USAC created the Form 499-As for each year estimating PacNet's revenue for the previous reporting years. Based on the revenue estimated for PacNet for each year, USAC determined that PacNet was not *de minimis* and therefore required to contribute to the Universal Service Fund (USF). All three late filed forms were downward revisions to the previously submitted 2006 Form 499-A and the estimated 2007 and 2008 Form 499-As. Because these forms were submitted after the twelve-month revision window had expired, USAC rejected the revised forms on September 10, 2009.

USAC is not authorized to waive the one-year deadline to submit a revised Form 499-A. Thus, USAC cannot accept a revised Form 499-A submitted after the twelve-month revision deadline has expired if information reported on the form results in a decreased contribution obligation.¹⁰ The revised 2006, 2007 and 2008 Form 499-As were correctly rejected and the appeal is hereby denied.

Pay and Dispute Policy

The FCC, in its Comprehensive Review Order,¹¹ directed USAC to assess late fees on all unpaid balances. It is USAC's policy to enforce any late payment fees associated with unpaid balances. It is the responsibility of the contributor to file correct revenue so that USAC may accurately assess USF contribution obligations. Failure to pay USF contribution amounts when due will result in late charges being assessed on the amount outstanding.

USAC's website provides guidance that specifically advises contributors that intend to file revisions to pay charges or risk receiving late payment fees.¹² In addition, the USAC

¹⁰ *Interim Contribution Methodology Order*, 17 FCC Red 24952, ¶36. See also, *Universal Service Contribution Methodology Requests for Waiver of Decisions of the Universal Service Administrator by Achieve Telecom Network of Mass., LLC, et al.*, WC Docket 06-122, DA 08-2695, 23 FCC Red 17903, ¶ 8 (2008) (FCC denies waiver of downward revision period finding that good cause did not exist to waive rule.).

¹¹ *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Report and Order*, WC Docket No. 05-195, et al., FCC 07-150, 22 FCC Red. 16372, ¶ 14 (2007) (*Comprehensive Review Order*), citing 47 C.F.R. § 54.713.

¹² See USAC website, *Revising Revenue Worksheets*, <http://www.usac.org/fund-administration/contributors/revenue-reporting/revising-revenue-worksheets.aspx>.

website explains that USAC must rely on the contributor to deliver accurate information and that billings are based on the revenue as reported.¹³ The USAC website also explains that late payment fees will not be waived unless the dispute is determined to be the result of a USAC error.¹⁴

USAC records indicate PacNet has not made timely payments toward its contribution obligation. As a result, PacNet has accumulated late payment penalties totaling approximately \$5,000. Any debt more than 90 days old is being transferred to the FCC for collection pursuant to the Debt Collection Improvement Act.¹⁵ USAC wishes to advise PacNet that it will continue to receive late fees and penalties until its account is paid in full.

If you wish to appeal this decision, you may file an appeal with the FCC. Detailed instructions for filing appeals are available at:

<http://www.universalservice.org/fund-administration/contributors/file-appeal>

Sincerely,

USAC

cc: Regina Dorsey, FCC Office of Managing Director
Hillary DeNigro, FCC Enforcement Bureau
Trent Harkrader, FCC Enforcement Bureau
Erica Myers, FCC Wireline Competition Bureau

¹³ See USAC website, How Does the Universal Service Fund Work? <http://www.usac.org/fund-administration/about/how-universal-service-fund-works.aspx>.

¹⁴ See USAC website, Paying USAC Bill during Appeal Process, <http://www.usac.org/fund-administration/contributors/file-appeal/>.

¹⁵ The debt transfer process was implemented pursuant to the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (DCIA). The DCIA requires, among other things, that federal agencies transfer debts delinquent over 180 days to the U.S. Department of Treasury for further collection action. DCIA also allows agencies to transfer debts under 180 days to Treasury. See also, *In the Matter of Amendment of Parts 0 and I of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, Report and Order, FCC 04-72, 19 FCC Rcd 6540, ¶ 6 (2004).